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Citation for published version:

Carmona, S, Donoso, R & Walker, SP 2010, 'Accounting and international relations: Britain, Spain and the Asiento treaty', *Accounting, Organizations and Society*, vol. 35, no. 2, pp. 252-273.
<https://doi.org/10.1016/j.aos.2009.07.008>

Digital Object Identifier (DOI):

[10.1016/j.aos.2009.07.008](https://doi.org/10.1016/j.aos.2009.07.008)

Link:

[Link to publication record in Edinburgh Research Explorer](#)

Document Version:

Peer reviewed version

Published In:

Accounting, Organizations and Society

Publisher Rights Statement:

© Carmona, S., Donoso, R., & Walker, S. P. (2010). Accounting and international relations: Britain, Spain and the Asiento treaty. *Accounting, Organizations and Society*, 35(2), 252-273. 10.1016/j.aos.2009.07.008

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**ACCOUNTING AND INTERNATIONAL RELATIONS:
BRITAIN, SPAIN AND THE *ASIENTO* TREATY**

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Acknowledgements: Previous versions of this paper were presented at the 11th World Congress of Accounting Historians, Nantes, the 12th Workshop on Accounting and Management Control *Raymond Konopka* Memorial (Almería, Spain) and research seminars at HEC Paris and IE Business School. We are grateful to the participants at these events and to Julio de Castro, Cynthia Giagnocavo, Nicolas Mangin, Carlos Ramírez and the two anonymous referees for their many helpful suggestions. Salvador Carmona acknowledges the financial support of the Spanish Ministry of Education's research Grant # SEJ2007-67582-C02-01.

ACCOUNTING AND INTERNATIONAL RELATIONS: BRITAIN, SPAIN AND THE *ASIENTO* TREATY

Abstract

The boundaries between accounting and law are contingent on time-space intersections. Here, these margins are explored in the realm of international relations by focusing on the *Asiento*, an 18th century treaty granting Britain the monopoly to trade slaves with the Spanish American colonies. Although a relatively minor concern of treaty-makers, noncompliance with provisions of the *Asiento* by the South Sea Company placed accounting centre stage in conflicts between Britain and Spain. In combination with geo-strategic and domestic political circumstances, reporting failures exacerbated the commercial dispute between the two nations which culminated in war in 1739. The accounting provisions of the *Asiento* are examined by drawing on managerialist and realist theories of treaty compliance. It is shown that British noncompliance with accounting obligations under the treaty was driven by realist self-interest and the maximisation of material gain. Given that such motivations dominated behaviour attempts to manage noncompliance through the routine processes and structures of international politics proved unsuccessful. Managerial devices such as diplomatic exchanges over treaty ambiguity and securing greater informational transparency merely provided further opportunities for the pursuit of self-interest. It is suggested that divergent perceptions of the role of accounting in international relations stem from the unique political, legal, social and cultural configurations of nation states. The study highlights the limitations of accounting as an instrument of treaty verification. Its effectiveness in that capacity is diminished where there is no shared understanding of the significance, purpose, content and interpretation of accounting information.

Keywords: accounting, treaty compliance, *Asiento*, international relations, managerialism, realism, Britain, Spain.

Introduction

In recent decades, a number of studies have examined the boundaries of accounting and its relationship with other disciplines (Burchell, Clubb, Hopwood, Hughes & Nahapiet, 1980; Hopwood, 1983, 1992; Klamer & McCloskey, 1992; Miller, 1998). Particular attention has been devoted to the interface between accounting and law because the law has had a “visibly significant influence on both accounting practice and thought” (Napier & Noke, 1992, p. 30; Martens & McEnroe, 1991, 1998; Bromwich & Hopwood, 1992; Freedman & Power, 1992; Sugarman, 1995; Walton, 1993; Napier, 1998b; Pong, 1999; Walker, 2004). Prior research has advanced understanding of the respective roles of the two disciplines and its practitioners in reform of the social and economic spheres (Napier, 1998a) and has examined the subordinated status of accounting *vis-à-vis* law (Johnson, 1981). Studies indicate that the dominant position of law has not been stable over time and space. Indeed, “the emergence of accounting from under the wing of law can be seen as having given rise to numerous tensions” (Miller & Power, 1992, p. 232). Such tensions are not universal (Camfferman, 2007) and it is suggested that their investigation be conducted “by reference to nationally and historically-specific instances” (Miller & Power, 1992, p. 232).

In this paper we seek to extend knowledge of the interface between accounting and law by venturing into the field of international relations (Carnegie & Napier, 2002; Richardson & MacDonald, 2002). This is attempted by examining an historical episode which focuses on the role of accounting in treaty compliance and enforcement - a subject which merits greater attention in both the accounting and international relations literatures.

Our empirical focus is on the *Asiento*, the 18th century contract under which Britain was granted a monopoly to supply slaves to the Spanish colonies in Latin America. In particular, we analyse the period 1711-1739 which spans the negotiations preceding the *Asiento* treaty and the circumstances leading to the War of Jenkins’ Ear between Britain and Spain. Our examination reveals the significance of various features of this time-space intersection. Britain and Spain had different legal, constitutional and socio-cultural traditions – most notably Britain boasted a system

of common law and constitutional monarchy, whereas in Spain a system of civil law and an absolute monarchy prevailed (LaPorta et al, 1998). The observation period also witnessed diverse economic conditions in the focal countries; an upsurge of overseas trade (often termed the 'commercial revolution') in Britain (Clapham, 1949; Mathias, 1969, pp. 92-106) and depleted national finances and substantial state intervention in Spain (Alvarez-Dardet et al, 2002). From these divergent contexts emerged variations between the two countries in the demands made of and for accounting, control and accountability in international agreements.

As will be illustrated later, when combined with other sources of tension, disputes between nation states over accounting could become so heated as to culminate in armed conflict. In this way the paper also seeks to contribute to another developing theme in accounting research. A number of scholars have investigated the impact of military crisis, and total war in particular, on the deployment and development of accounting technologies, accounting regulation and the advance of the profession (Gallhofer & Haslam, 1991; Loft, 1994; Walker & Shackleton, 1995; Walker, 2000). Other studies have enhanced our understanding of the importance of administrative failures and accounting deficiencies in the conduct of wars (Funnell, 1990, 2005), shown how the deployment of accounting could condition the discourse of war and mediate relations between political and military complexes (Chwastiak, 2001, 2006), and illustrated the manner in which accounting can reflect and become embroiled in ideological contests during armed conflict (Fernández-Revuelta, Gómez & Robson, 2002). In the current paper we identify another dimension of the study of accounting and war: how the failure by one nation to account under treaty obligations could contribute to an impasse in bilateral relations which, when compounded by strategic and domestic factors, culminated in military aggression.

In focusing on the role of accounting in mediating relationships between nation states the study engages with a sub-discipline of history which seldom features in accounting. During the nineteenth century it was in diplomatic history that the advance of scientific method in historical scholarship primarily took place. Narrating histories of statecraft, foreign policy and high politics, as revealed in treaties, diplomatic papers and other official papers, dominated the history research agenda in nationalist and imperialist Europe.¹ Subsequently, the focus of historians shifted

towards more expansive and inclusive agendas which encompassed the economic and socio-cultural foundations of international relations. With its emphasis on ‘courts and cabinets’ diplomatic history became perceived as the moribund study of power elites (Marwick, 1989, pp. 93-94).

Diplomatic history has often been degraded as the dry record “of what one clerk wrote to another clerk”, despite the fact that what the bureaucrat inscribed may have impacted on numerous lives (Vincent, 1996, p. 69). More recently the essential focus of diplomatic history on sovereign states has been considered irrelevant in the context of declining territoriality and advancing globalisation (Maier, 2000). While some commentators have perceived the demise of diplomatic history since 1945 (see, for example, Vincent, 1996, p. 151) others have sought its revival by accommodating wider frames of reference (Watt et al, 1988). A number of diplomatic historians in the US in particular, have argued the relevance of their subject to contemporary geopolitics and globalisation debates, indicated the potential it offers for interdisciplinary engagement and critical approaches, and asserted the opportunities it provides for exploring identities, cultures and non-state actors in international relations (Hogan, 2004; Stephanson, 1998; Zeiler, 2001).

The current investigation is supported by a wide range of primary sources. Even though the availability of archival materials has been regarded as a major constraint to performing comparative research in accounting history (Richardson & MacDonald, 2002), the case presented here draws on a wealth of surviving documents on international relations. The use of material contained in the archives of the two focal countries concerned also offered the advantages of triangulation and helped expose differing interpretations of the same events. Archival evidence for Spain was gathered from the *Archivo General de Indias* (General Archive of *Indias*, *AGI*) – Spanish American Colonies, in Seville. This was supplemented by evidence gathered from the *Archivo General de Simancas* (General Archive of Simancas, *AGS*, in Simancas) and the *Archivo Histórico Nacional* (Archive of National History, *AHN*, in Madrid). For Britain the principal source was state papers in the National Archives, London.ⁱⁱ Secondary sources included books and articles on Anglo-Spanish relations during the first half of the eighteenth century. The majority

of the latter sources were produced during the highpoint of diplomatic history, from the end of the nineteenth to the mid-twentieth century.

As well as attracting the attention of historians of diplomacy, Anglo-Spanish relations have also begun to feature in the accounting literature (Donoso, 2008). The current paper differs from this study in a number of respects. Whereas Donoso (2008) draws on Spanish primary sources (mostly gathered from AGS) as the basis of a descriptive account of events in the period 1737-1750, focusing on the War of Jenkins' Ear and the negotiations that led to a peace settlement, this investigation draws on sources located in Spain and Britain to offer a theoretically informed exploration of the relationship between accounting and law in the realm of international relations for the period 1711-1739. To achieve this we focus on accounting, transparency and reporting through the lenses of managerialist and realist approaches to understanding treaty compliance and noncompliance.

The paper is structured thus. In the following section we consider the literature on international relations, theories of treaty behaviour and the role of informational transparency and reporting - including accounting - in compliance. We then describe the main features of the *Asiento* treaty and its conduct by the South Sea Company (SSC) (the Assientists). The formal requirement imposed on the SSC by the *Asiento* treaty to account to the Court of Spain is then related. The motives behind noncompliance with the terms of the treaty by the SSC are then explored. Responses to noncompliance and the conflicts which ensued, such as bilateral commissions and diplomatic exchanges, are examined in the context of managerialist and realist theories of treaty behaviour. There follows a narration of how the failure to resolve disputes between Britain and Spain over accounting for the *Asiento* featured in discourses preceding the outbreak of war. In the conclusion we reflect on the dynamic relationship between accounting and law and the implications of our findings for theories of treaty behaviour and the functioning of accounting as a technology of compliance.

Treaties, compliance and reporting

A treaty is a written agreement “(i) between one or more States and one or more international organizations; or (ii) between international organizations, whether that

agreement is embodied in a single instrument or in two or more related instruments and whatever its particular designation” (Reuter, 1995, p. 246). The agreement may be designated a contract, protocol, convention, pact or other descriptor. The specific term ‘treaty’ is usually applied to international instruments relating to matters of particular import and solemnity, such as peace, disarmament and the determination of national borders (<http://untreaty.un.org/English/guide.asp>).

Historically, treaties have been the principal instrument of international relations. The exclusive right of states to treat was established in Europe during the seventeenth century (Holzgreve, 1989) and during the eighteenth century treaties became the main source of the law of nations (Nussbaum, 1953, pp. 144-174). Agreements involving several countries were often codified in a series of bilateral treaties between monarchical heads of state (as at the Peace of Utrecht, 1713). Subsequently, multilateral instruments became more usual and were extended in the modern age to subjects of common interest to the international community (Reuter, 1995, pp. 2-16).

Managerialism and realism

The history of international relations shows that nations do not always adhere to provisions stated in treaties. In consequence, there is much interest in treaty behaviour - comprehending the motives for noncompliance and the systems and mechanisms which encourage compliance (Mitchell, 1994, p. 28; Keeley, 1998; Simmons, 2000). Students of international regulatory regimes deploy two principal theories to understand compliance - the managerialist approach and the realist approach (Simmons, 1998; Donnelly, 2000). Fundamentally, managerialists assume that the behaviour of states is driven by normative expectations while mainstream realists argue the primacy of interest protection.

Proponents of the managerial approach refer to the wider notion of *pacta sunt servanda*, that is, treaties are binding (Chayes & Chayes, 1995, p. 8). In addition to explaining the legal and ethical motivations for compliance, managerialists perceive compliance as a behavioural expectation, a presumption, such that in practice nations have a “general propensity to comply with international obligations” (Chayes &

Chayes, 1995, p. 3). Conversely, noncompliance represents deviance (Chayes & Chayes, 1993) and results in nations incurring reputational costs (Simmons, 2000). From a managerialist perspective international relations takes place in a dynamic context from which may emerge three potential sources of noncompliance: (i) changed understandings of treaty provisions facilitated by ambiguity and indeterminate language in the original treaty; (ii) nations' miscalculations of their own technological, scientific, military, financial or administrative capabilities to comply; and (iii) the emergence of uncontrollable socioeconomic or political changes since the treaty was signed (Chayes & Chayes, 1995, pp. 9-17).

Given these sources of noncompliance and the general propensity of states to adhere to their treaty obligations, managerialists consider that devising punitive enforcement mechanisms to secure compliance is needless. Rather, they contend that noncompliance "can be managed by routine international political processes" (Chayes & Chayes, 1993, p. 204) such as dispute resolution and persuasion, and through the provision of assistance to remedy incapacity to comply.

The managerial, norm-driven, view of treaty compliance has attracted criticism (Colgan, 2006). Most notably Downs et al (1996, p. 380) argue that supposedly high levels of treaty compliance is symptomatic of the fact that "most treaties require states to make only modest departures from what they would have done in the absence of an agreement". By reference to historical examples Downs et al (1996) contest the managerialist explanations for noncompliance and observe that a state's commitment to compliance is advanced "cautiously or cynically" rather than genuinely (Simmons, 1998, p. 76). The authors emphasise the need for enforcement and punishment regimes to make treaties stick as opposed to reliance on the mere management of dispute resolution and addressing incapacity issues. Such regulatory regimes become necessary because fundamentally, it is self-interest that dictates the willingness of states to comply with treaty provisions.

The argument that nations only comply with treaties when it is in their interests to do so is associated with realist theory, which portrays the international system "as a brutal arena where states look for opportunities to take advantage of each other, and therefore have little reason to trust each other" (Mearsheimer, 1994). Realism

comprises diverse streams. For example, biological realists emphasise the manner in which international politics are conditioned by the fundamentals of human nature, and in particular, the pursuit of egoism (Donnelly, 2000, pp. 44-50). Early classical realists such as Machiavelli and Hobbes argued that men are competitive and protective, motivated to seek gain and glory rather than the pursuit of a common good. Given their egoistic motives men are conflictual and untrustworthy (Donelan, 1990, p. 23). Biological realists contend that the behaviour of states can be understood as an extension of the self-centred individual with the added dimension that in international relations untrustworthiness and conflict are exacerbated by factors such as nationalism, cultural differences and less than perfect knowledge of the intentions of competitor states (Donelan, 1990, pp. 23-27).

As structural realists also emphasise, in the absence of an overarching common authority, the international stage is the site of an anarchic struggle for power, wealth and security between autonomous states (Donnelly, 2000, pp. 81-89). Further, states not only seek the maximization and protection of absolute gains of power and wealth but also the maximisation of gains relative to other states (Donnelly, 2000, pp. 58-60). This competitiveness reduces the scope for international cooperation, particularly in the longer term. In these contexts, cooperation becomes “difficult to achieve ... and always difficult to sustain” (Mearsheimer, 1994, p. 12).

For the realist, competition persists within cooperative ventures such as treaties. Agreements which contain opaque, complex and ambiguous provisions can offer additional scope for the pursuit of self-interest. Such opacity render accusations of violation difficult to sustain and offer ‘wiggle room’ when implementation issues arise or conditions change. Consequential attempts at dispute resolution provide an opportunity for a state “to appear superficially reasonable while straight-forwardly pursuing its material self-interest” (Colgan, 2006, p. 55), and this is exacerbated by the dynamic character of international relations. The realist approach to compliance also recognises the importance of the context in which the treaty was made and operates; this may present scope for invoking moral, ideological or other reasons for legitimating violations.

Thus, in realist approaches to international relations the maximisation of the power and material self-interest of a nation are prioritised over moral and ethical considerations of treaty compliance (Donelan, 1990, p. 24). Indeed “realism maintains that universal moral principles cannot be applied to the actions of states” (Morgenthau, 1954, p. 9). National governments behave as self-maximising rational actors. If they calculate that the material benefits of treaty violation outweigh its costs it is in the state’s interest not to comply with all or some of the treaty’s provisions. Hence, for realists, treaty rules do not cause compliance. In practice treaties are frequently adhered to because they reflect the interests of powerful states or because the costs of noncompliance are too high.

As the foregoing suggests, although its adherents may share some key assumptions there exists a variety of realist approaches to the study of treaty compliance. Relatedly, the extent to which the realist and managerialist positions can be characterised as polar extremes can be challenged. There are commonalities and gradations. At a basic level both approaches accept that nations will often fulfil treaty commitments and both expect violations to occur (Mitchell, 1994, pp. 6-9). Further, managerialists concede that nations would not enter into treaties in the first place if it were against their interest to do so. Contemporary realists accept that normative behaviour features in the determination of the costs and benefits of compliance and that the notion of making all decisions on the basis of a rigorous calculation of absolute and relative gains is unlikely (Chayes & Chayes, 1993; Mearsheimer, 1994). It can also be argued that both approaches offer an overly simplistic notion of causality and behaviour in the complex realm of international agreements, which, in reality, involves mixed motive game playing and degrees of compliance in rapidly shifting contexts (Downs, 1993).

It is also important in the current study to recognise that compliance or noncompliance may be driven by forces within the state, such as the populace as a whole, the ruling elite or other influential parties. The demands of powerful domestic pressure groups are likely to be more immediate than assuaging the distant concerns of overseas nations. In the realm of modern environmental treaties, for instance “Powerful non-state actors, including multinational corporations, non-governmental

environmental groups, and scientists, often influence international politics both directly and by helping to define state interests” (Mitchell, 1994, p. 36). Downs et al (1996, p. 394) argue that the most obvious causes of noncompliance feature “the demands of domestic interest groups and the significant political benefits often associated with protection”. In relation to the case explored here noncompliance was particularly motivated by the British state’s pursuit of geo-strategic interests in Latin-America activated through the agency of the South Sea Company.

Informational transparency and compliance

Students of international relations recognise the importance of transparency, reporting, verification and monitoring to the achievement of treaty compliance. Whereas realists doubt the impact of such mechanisms on behaviour, especially where the benefits of cheating are evident (Downs et al, 1996), managerialists contend that, given the propensity of states to adhere to treaty rules, such processes can encourage compliance. Consequently the design of the compliance system associated with an international agreement becomes significant (Mitchell, 1994, p. 52). Managerialists argue that compliance regimes focused on coercive enforcement are not viable. Rather a managerial strategy is necessary which reinforces the normative predilection of states to adhere to obligations by removing obstacles to compliance in a cooperative spirit. A number of devices may be employed in this regard. These include establishing institutional arrangements for resolving disputes between parties over ambiguous treaty provisions; attempting to persuade a party to comply; and, where deficient, providing technical, administrative or financial capacity to enable compliance (Chayes & Chayes, 1995, pp. 24-28). Another, key, mechanism is to ensure informational transparency:

The major goal of any treaty’s compliance information system is to maximize transparency. Transparency refers to both the amount and quality of the information collected on compliance or non-compliance by the regulated actors as well as the degree of analysis and dissemination of this information. Increasing transparency is seen as an essential component of any prescription to increase compliance (Mitchell, 1994, p. 57).

Similarly, neoliberal institutionalist theories of international relations emphasise the manner in which international rules and organisations can encourage cooperation by requiring the gathering and distribution of reliable information about the behaviour of states. The exchange of “high quality information reduces uncertainty” while

asymmetric information, deception, non-disclosure and other impediments to data communication encourage conflict (Keohane, 1982, p. 344). International cooperation is stifled by impediments to “the honest sharing of information” (Morrow, 1994, p. 388). Political scientists also indicate that slippage from full compliance is unavoidable in real-world contexts where complete information and perfect observation (as in treaties monitoring) are not attainable (Bednar, 2006). The temptation to cheat always exists, even when relations between parties are cooperative (Ostrom, 1999). Bednar (2006, p. 350) argues “when we are asked to do something that is costly for us to do, and we know that others can’t see our action perfectly, we shirk a little bit. The general phenomenon is true whether we are talking about a law, a pact among friends, an organizational norm, or a treaty between nations”.

The collection and distribution of information about a signatory’s treaty performance is thus widely perceived as essential to encouraging reciprocity, providing reassurance to other parties that they are not being taken advantage of, reinforcing the adherence of independent actors to treaty norms, and deterring noncompliance (Chayes & Chayes, 1995, pp. 23-24, 135-153). For managerialists transparency is an important factor in compliance because it enables the revelation of departures from prescribed conduct and allows the miscreant to be called to account. Essential to transparency is the reporting of data on treaty performance. In the case of trade treaties such as the *Asiento*, accounting was identified as an important device for monitoring, reporting and achieving transparency.

Regular, complete and accurate reporting is a key element of the achievement of treaty objectives and compliance (Mitchell, 1994, pp. 123-124). Reporting regimes feature significantly in contemporary treaties: “So common and embracing are these provisions that they risk information overload, in which reports, notices, requests for information far outstrip the ability of national and international bureaucracies to produce or to process and assimilate the product” (Chayes & Chayes, 1995, p. 172). Students of compliance explore the quality of extant reporting systems, the implications of the widespread use of self as opposed to independent reporting, the impacts of publication on compliance, and factors which incentivise and disincentivise the submission of comprehensive reports. In relation to the latter it has

been suggested of environmental treaties that “In self-reporting systems, states or other actors will not report if they believe that revealing their own noncompliance will prove more costly than remaining silent” (Mitchell, 1994, p. 144). Moreover “the refusal to report is often the first intimation of serious political resistance to compliance with basic treaty norms and it begins the mobilization of counterpressures” (Chayes & Chayes, 1995, p. 155).

The need to ascertain the reliability of self-reported data encourages the use of verification and monitoring procedures. The existence and activation of these processes encourage truth-telling by the declarant but, as in the case explored here, “some reporting systems seem to be designed to make it difficult for outside agencies and parties to verify the accuracy and completeness of required reports” (Chayes & Chayes, 1995, p. 165). In instances where verification is compromised by the withholding, destruction or loss of data, or where values of data disclosed are susceptible to subjective determination, the risk of intentional misreporting is increased. Verification and monitoring can also be complicated where reporting depends on affected individuals and corporations as opposed to governments, and where transparency involves the disclosure of confidential business information (Chayes & Chayes, 1995, pp. 166-167, 190-191).

The interdisciplinary study of treaty verification currently explores the manifold issues and complexities of devising and implementing technologies of measurement (Avenhaus et al, 2006) as well as systems of data gathering and monitoring. During the eighteenth century, the period of the present study, verification relied heavily on data gathered from documentation, oral testimony and inspection.ⁱⁱⁱ In respect of treaties concerning navigation and trade, evidence from books of account, inventories and certificates could feature large. For example, in the commercial treaty concluded by Britain and France at Utrecht in 1713, accounting was an important monitoring technology - merchants on both sides were to keep accounts and papers without the threat of “search and molestation” and these were to be submitted to the courts in their entirety should a controversy or dispute arise (*A Collection of Treaties*, 1714, p. 283; AGI. Indiferente General. Legajo 2785).

In what follows it is shown that while managerialist theory aids an understanding of the institutions established to address compliance issues arising from the operation of the *Asiento* treaty, it is realist theories which best explain the motives behind the behaviour of the states involved. It is suggested that in a context where the advance and protection of self-interest prevailed, accounting proved an imperfect instrument of treaty verification. However, before this analysis commences it is necessary to describe the international agreement under scrutiny.

The *Asiento* and the South Sea Company

The *Asiento* treaty between England and Spain was signed during a period when mercantilist policy dominated international trade and when political and commercial agreements were increasingly subject to separate treaties (Nussbaum, 1953, pp. 126-128).

In 1700 Carlos II, the last Habsburg king of Spain, died without issue and named the Duke of Anjou, the grandson of King Louis XIV of France, as heir to the Spanish throne. The Duke of Anjou would become Philip V. This succession was deemed unacceptable by countries such as England and Holland on the grounds that if France and Spain were governed by the same royal house, the Bourbons, the balance of power in Europe would be disrupted (Lynch, 1999). This conflict resulted in the War of the Spanish Succession, 1702-1713.

In April 1711 Britain commenced negotiations with France to reach a peace settlement and in January 1712 multilateral discussions to end the War of Succession were convened at Utrecht (McKay & Scott, 1983, pp. 63-66). In spring 1713 Britain signed bilateral treaties with France and with Spain – referred to as the Peace of Utrecht. Philip V was recognised as King of Spain. He renounced any rights to ascend to the French throne and the disputed inheritance of Spanish dominions was divided among various powers. During this period Spanish policy was largely determined by France. Indeed, the principal elements of the treaty between Britain and Spain had been negotiated between Britain and France (Jover Zamora, 1985). Subscription to a bilateral agreement with Britain was greeted with some reluctance by the Spanish who determined to revise the Treaty of Utrecht and its associated agreements at the earliest opportunity (Zeller, 1955).

During the negotiations leading to the Treaty of Utrecht Britain and Holland claimed the right to free trade with the Spanish possessions in Latin America. Further, the British demanded the *Asiento* - the exclusive right to supply slaves to the Spanish dominions. Imported slaves were necessary to meet the high demand for labour in colonial outposts and because it was forbidden to enslave the depleted indigenous populations of the Americas (Palmer, 1981, pp. 3-4). Traditionally, Spain had outsourced the *Asiento* as it lacked possessions in Africa from which a supply slaves to the Americas could be secured. Since the early sixteenth century the contract had been placed with various parties including the Genoese and the Portuguese (Kamen, 2002, pp. 430-431; Pares, 1936, pp. 10-11). Increasingly, the issue became embroiled in international diplomacy such that from 1702 to 1712 the *Asiento* was contracted to France through the instrument of a treaty (McLachlan, 1940, pp. 22-29; Scelle, 1910). The subsequent *Asiento* with Britain, the focus here, has been described as “a true treaty” (Scelle, 1910, p. 654).

In England the question in 1711 was not so much whether the *Asiento* could be obtained by the British government but, “to whom the privileges which it carried could be entrusted” (Donnan, 1730, p. 421). A bill creating the South Sea Company was introduced to the House of Commons in May 1711. The SSC, a hybrid of a private and public entity (Paul, 2006), was regarded as the “masterpiece” of Robert Harley, Earl of Oxford and Lord Treasurer, who perceived it as a way of funding the national debt (Thomas, 1998). The British Crown had considerable financial interests in the SSC, and this resulted in the appointment of the Prince of Wales and King George I as governors in 1715 and 1718 respectively.

The treaty of peace and friendship concluded between Britain and Spain at Utrecht in 1713 provided that “The Catholick King grants to her Britannick Majesty, exclusive of the subjects of Spain and all others, the Contract of carrying Blacks into the Spanish West-Indies for the Space of Thirty Years, beginning from the first Day of May, 1713, on the same Conditions as the French enjoy’d it” (*A Collection of Treaties*, 1714). This term represented a considerable increase over the ten years granted to the previous French contractors (Thomas, 1998, p. 234). Shortly before the *Asiento* treaty was signed on 26 March 1713 Philip V proposed to annex an

article which would permit the annual loading of a vessel of 500 tons with duty free merchandise to trade with the Spanish Indies (AGI. Indiferente General. Legajo 2773). Although the *Consejo de Indias* (Board of Trade with Latin America) advised against the proposal of an annual ship the King granted it in compensation for the losses which were expected to arise from the trade in slaves.

The *Asiento* treaty also provided that the King of Spain would be entitled to one quarter of the total profit earned from the annual ship plus five percent of earnings that pertained to the British three-quarters, that is, a total of 28.75% of the net income of each annual vessel (*A Collection of all the Treaties*, 1785, Vol. 1; AGI. Indiferente General. Legajo 2769. L8-28). Lord Lexington, British ambassador to Madrid and a key negotiator of the treaty, reported that this would be “the best Asiento that was ever made and a more advantageous Treaty of commerce [than] any nation yet had” (Jover Zamora, 1985, p. 391). By contrast the British envoy to Madrid considered the treaty “calculated for captiousness and chicane” (quoted in Palmer, 1981, p. 10).

As expected, the British Government remitted the operation of the *Asiento* to the newly chartered SSC in return for £7.5m (Thomas, 1998, p. 233). Importantly, the SSC (the Assientists) had secured a supply of slaves through close co-operation with the Royal African Company (Paul, 2006). The *Asiento* stipulated the delivery of 144,000 *Piezas de India*^{iv} to the Spanish Americas, that is, 4,800 Negroes per year, until May 1743. The Negroes were to be “of the regular standard of seven quarters, not being old or defective” (*Collection of all the Treaties*, 1785). For each *Pieza* of slave sent to ports in the Indies where a Spanish official was present, the British were to pay a duty of 33 1/3 *pesos escudos de plata* (pieces of eight)^v to the Crown of Spain (Palmer, 1981, pp. 9-10). The Assientists were also to advance 200,000 pieces of eight to the Spanish, to be reimbursed from duties payable. However, the SSC failed to meet the annual quota of slaves and English traders independent of the company attempted to meet the shortfall, albeit illicitly. Palmer (1981, pp. 97-112) has estimated that the SSC delivered only 74,760 slaves to Spanish America, 1714-1739 and that after the South Sea Bubble in 1720, with the exception of the annual ships and the pursuit of contraband trade, the company displayed limited interest in commercial activity.

Interests in the *Asiento* effectively comprised the SSC 45%, the British Crown 25% and the Spanish Crown 25% (AGI. Indiferente General. Legajo 2769. L8-28; see also Bernal, 2001; Sorsby, 1975, pp. 16-17). The remaining 5% was granted to the individuals who had facilitated the negotiations which preceded the agreement. The 25% owned by the Spanish was worth 1,000,000 silver *pesos escudos*. However, under the *Asiento* treaty it was agreed that the Spanish should not remit this amount to the Assientists who would provide finance at 8% interest. The King of Spain would receive his share of the profits of the *Asiento* every five years, plus annual duties payable on the import of Negroes, once the Assientists were reimbursed with interest. In the event that the SSC incurred losses the Spanish Crown was compelled to reimburse the Assientists in a manner least prejudicial to the royal revenues.

The SSC agreed with the Spanish Crown to set up delivery and trading centres or ‘factories’ in the Spanish Indies (Palmer, 1981, pp. 59-65). These establishments contained warehouses for the classification and storage of Negroes and provisions. The factories were located in various sites. Buenos Aires would receive slaves to be forwarded to Chile and Potosi; Cartagena would be the distribution centre for the mining areas in the north of South America; Panama and Porto Bello were to supply the market in Lima; Veracruz would distribute slaves across New Spain (modern day Mexico); and Havana and Santiago de Cuba would receive slaves to be used as manpower on island plantations. The three main operational centres for the import and distribution of Negroes and other merchandise were in Barbados, Buenos Aires and Jamaica (Nelson, 1945). Factories were run by six SSC factors (agents) or representatives, with the exception of the Havana and Santiago factories, which were administered by three factors each. The factors were remitted to conduct the sale of Negroes and to report to South Sea House in London every two years (Sorsby, 1975). The factory’s accountant was responsible for bookkeeping and cash management.

The slave ships were permitted to carry materials such as cables, candles, iron and wood as well as the necessary provisions to establish and conduct the trade. However these items were not to be transported for the purposes of sale in the American Indies. The Assientists were allowed to apply the proceeds of the sale of slaves to

acquire money, bars of gold and silver or other produce for shipment back to Europe (AGI. Indiferente General. Legajo 2769. L8-10). Following arrival in Britain an exact account of the ship's cargo was to be submitted to the Spanish to confirm that proceeds arose only from the sale of Negroes. No Spanish passengers or their effects were to be transported on *Asiento* ships (AGI. Indiferente General. Legajo 2769. L8-17).

The transport of articles other than slaves made smuggling possible (Coxe, 1846). Shortly after the *Asiento* treaty came into force the Spanish authorities provided the British with evidence of an escalating illicit trade involving SSC ships (Williams, 1900). Although Spanish inspectors checked the SSC vessels before departure, auxiliary boats supplied them with contraband when they left port. Such incursions in Spanish markets would have serious consequences for that nation's already depleted finances (Artola, 1982). In fact, the substantial illicit trade under the *Asiento* gave English commerce "its first large scale entry into the Spanish American field" and weakened Spanish economic dominance over its colonies (Aiton, 1928, p. 177). According to Nelson (1945, p. 55) the SSC's smuggling "threatened to destroy the entire commercial framework of the Spanish Empire". Contraband trade became a constant concern of the Spanish who invested heavily in naval protection. While this effectively diminished the profitability of the *Asiento* for the Spanish enhanced monitoring activity succeeded in detecting an increasing amount of smuggling (Bernal, 2001).

Difficulties in operating the *Asiento* resulted in the conclusion of supplementary conventions and treaties in December 1715 and May 1716. These were confirmed by the Treaty of Madrid in June 1721 (*General Collection of Treaties*, 1732; Williams, 1900; AGI. Indiferente General. Legajo 1597 and 2776). In 1718 a declaration of war between England and Spain halted operations under the *Asiento* until 1721. Similar conflicts interrupted the contract from 1727 to 1729 and 1739 to 1748. During these crises the Spanish either confiscated or embargoed property of the SSC in the Indies. Accounts and records of these retaliatory actions, or *Represalias* (Reprisals), were maintained within *Contaduría*, the series of files containing details of financial transactions and other accounting related documents. The value attached

to these ‘revenges’ was a source of dispute between the Spanish government and the SSC.

In summary, for the Spanish the *Asiento* facilitated the retention and exploitation of the Spanish empire in the Americas. For the British, in a mercantilist age “when almost every nation regarded its own dependencies as exclusive markets for the trade of the mother country” (Williams, 1900, p. 272), the *Asiento* conferred specific trading privileges that broke the monopoly of Spanish trade with its colonies (Aiton, 1928). Such advantages proved “irreversible” and had a lasting influence on British-Spanish relations during the eighteenth century (Lynch, 1999). Ultimately the award of the *Asiento* involved a transfer of political and commercial power from Spain to Britain and was consistent with British ambitions to extend trading and navigation in the Spanish Indies (Batchelor, 1925; Palacios Preciados, 1973).

Accounting and compliance monitoring in the *Asiento* treaty

Accounting was an important technique for monitoring British compliance with the *Asiento* treaty.^{vi} The terms of the treaty relating to the rendering of accounts were taken from the preceding agreement between France and Spain. Article 29 of the *Asiento* Treaty between Britain and Spain stated:

That the said Assientists are to give an account of their profits and gain at the end of the first five years of this Assiento, with accounts taken upon oath, and certified by legal instruments, of the charge of the purchase, subsistence, transportation, and sale of the negroes, and all other expences upon their account; and also certificates in due form, of the produce of their sale in all the ports and parts of America, belonging to his Catholic Majesty, whither they shall have been imported and sold; which accounts, as well of the charge as the produce, are first to be examined and settled, by her Brittanick Majesty’s ministers employed in this service, in regard to the share she is to have in this Assiento, and then to be examined in like manner in this court; and his Catholic Majesty’s share of the profits may be adjusted and recovered from the Assientists, who are obliged to pay the same most regularly and punctually...(Collection of all the Treaties, 1785).

It was provided that the same reporting procedure might take place at subsequent five year intervals. At the end of the contract the Assientists were permitted three years to remove their effects from the Indies, adjust their accounts and “make up a balance of the whole” (Collection of all the Treaties, 1785; AGI. Indiferente General. Legajo 2785). The manner in which the monarchs were directly referred to in Article 29 is indicative of the importance attached by the Crowns to the accounting requirement. Particularly in the context of a commercial treaty accounting was perceived as a key device for reporting, verification and monitoring.

In addition to the submission of periodic accounts on-site monitoring and reporting was performed. Philip's financial interest in the contract permitted his appointment of two representatives to watch over the SSC and interpose on his behalf in London (Scelle, 1910). Further, under the *Asiento* vessels delivering Negroes to Spanish ports in the Caribbean and Buenos Aires were to be visited by the resident governor and "searched to the bottom, even to the ballast" by Spanish officers (*Collection of all the Treaties*, 1785; AGI. Indiferente General. Legajo 2769, L8-22). The officer was to certify the cargo of slaves. Goods not for purposes of provisioning could be seized and burnt. The Spanish Crown expected to receive reports of the due performance of these controls. Here too, the submission of accounts was an important monitoring device (AGI. Indiferente General. Legajo 2769, L8-29). For instance, in 1735 two British ships were held in port at Havana because the SSC factors there would not disclose the accounts (Hildner, 1938; AGI. Indiferente General. Legajo 2791). The English factor at the Havana factory, Woolley, eventually delivered the accounts and, as a result, the ships were permitted to sail (AGI. Indiferente General. Legajo 2812).

The archives pertaining to the negotiations which preceded the treaty suggest that the accounting provisions were not controversial (see AGS. Est. Legajo 6896).^{vii} However, it is clear that the two sides perceived the significance of these provisions differently. Given the commercial, financial and geo-political advantages offered by the *Asiento* treaty the accounting requirements may have appeared rather incidental to the British in 1713. By contrast, the less exuberant Spanish attached considerable importance to them and would be insistent about compliance. This should be understood in the context of depleted national finances, the potential threat the *Asiento* treaty posed to Spanish interests in the Americas, and an economy regulated by monopolies and royal concessions. A related factor is likely to have been the significance accorded to accounting prescriptions in the absolutist state. Spain had been the first country to require double-entry bookkeeping by royal decrees, in 1549 (Cigales) and 1552 (Madrid). Some commentators contend that statutory compulsion reflected widespread use of the technique (Donoso, 1996, p. 120). Regulations on accounting became so voluminous that consolidation into a single instrument proved necessary in 1567 and required that "banks and currency exchangers as well as

merchants and any other people, both Spanish and foreigners, doing business either within or outside these kingdoms are obliged to keep records in Castillian language in their books of *caxa and manual* according to debit and credit” (*Nueva Recopilación*, Libro IX, Título IV, Ley XII, 1567). During the late seventeenth and early eighteenth centuries, French influences furthered the centrality of accounting to business life. The Colbert Ordinances of 1673, which obliged French merchants to keep accounting books in a state which could be presented in the event of litigation, were mirrored in Spain by the Ordinances of Bilbao, 1737.

Accounting was also much prescribed for state controlled organisations, which historically played a central role in the Spanish economy, often for the purpose of detecting and preventing fraud (Carmona & Donoso, 2004). In an early move to ensure the implementation of double-entry bookkeeping the Royal Treasury created professional accountants (*Contador del Libro de Caxa de la Real Hacienda*) who were obliged to report to the Board of Treasury (Carmona, Donoso & Ezzamel, 2008). The importance attached to accounting was also evident in 1726 when the King approved the establishment of a single Treasury for the Spanish empire. This not only entailed the reorganization of the Treasury Department across the Spanish territories but also established extensive reporting procedures and redefined the role of treasury accountants (Pérez Fernández-Turégano, 2006). In this context, any failure by the British to comply with the accounting requirements of the *Asiento* treaty was likely to attract considerable attention in Spanish quarters.

Noncompliance with the terms of the *Asiento* treaty

Soon after the *Asiento* commenced the Spanish formed the view that the SSC lacked any genuine intent to render accounts of its commercial activities under the treaty. By the time the SSC resumed the *Asiento* after the war between Britain and Spain from 1718 to 1722, it had failed to comply with the reporting provisions of the treaty or to remit any payments relating to the first five-years of the contract. It had also failed to submit the accounts of two annual ships which sailed in 1717 and 1721 having been given permission by Philip V to trade in the Spanish Indies (see Donoso, 2002). The reason for noncompliance on the British side was the self-interested pursuit of material and strategic gain. The cost of compliance was too high; the benefits of cheating substantial.

Noncompliance and the pursuit of self interest by the SSC

As had been the case with previous Assientists, legitimate trading under the *Asiento* was soon discovered by the SSC to be less remunerative than expected (Carswell, 1960, pp. 65-67; Thomas, 1998, p. 233). When profits appeared to be earned from supplying slaves they were often eroded by substantial bad debts arising from credit transactions with colonists (Palmer, 1981, pp. 145-155). Carrying illicit cargoes was more attractive (McLachlan, 1940, pp. 59-64). The supply of Negroes offered the British “a screen behind which to import forbidden commodities into the Spanish colonies” (Nelson, 1945, p. 55; Laughton, 1889; Scelle, 1910). Conformity to the accounting and reporting obligations of the treaty would have rendered such activity transparent. Whereas the public accounts of the SSC revealed that the *Asiento* (if not the annual ships) was loss making (McLachlan, 1940, pp. 129-130), the secret books of its sub-governor would have shown to the Spanish that the officers of the SSC were making substantial profits - £600,000 in the period immediately before the outbreak of war in 1739 (Aiton, 1928). The books would also have indicated that, under the cover of permission to supply provisions for slaves, crew and factories, the fortune-seeking officers of the SSC were exporting illicit goods to the Indies and importing contraband to Europe whenever the opportunity presented itself (Aiton, 1928). Using the secret account books of the sub-governor, Nelson (1945) estimated that illegal imports into the Spanish Indies on Negro ships amounted to at least £5m from 1730 to 1739 and £0.5m from the two annual ships permitted during those years. The interests requiring protection also went beyond the officers of the SSC. According to Scelle (1910, p. 656) the considerable “private profits” earned “were distributed throughout the whole English nation: London commerce shared in the whole of it”. Hence, while the Spanish insisted on strict adherence to the accounting and inspection provisions of the treaty, the English were equally determined to obfuscate or ignore them.

The Spanish insistence on compliance became more determined as evidence mounted that the supply of slaves and the annual ship were a veil behind which the SSC was conducting illicit trade, and that the true accounts of the operation were being hidden from them. According to Bolingbroke, a director of the SSC, the firm was launched to

become “a shelter to cover up illicit trade” (see Thomas, 1998, p. 237). Two forms of illicit trade were performed in relation to the *Asiento* (i) smuggling was conducted by the SSC and recorded in its secret accounts,^{viii} and (ii) contraband trade was conducted by the captains of the ships chartered by the SSC to carry slaves and merchandise. From the SSC perspective, the latter form of smuggling was deemed “very damaging for the interests of the company” (Thomas, 1998, p. 238) and it made every effort to discourage it (Palmer, 1981, p. 13). As far as the Spanish were concerned these forms of smuggling were indistinguishable.

In the absence of transparency and given the damage done to their mercantile interests the Spanish went to considerable lengths to capture accounting information. Accounts were sought, for example, on the smuggling of flour (see AGI. Indiferente General. Legajo 2802) and of boats carrying illegal cargo (see AGI. Indiferente General. Legajo 2791). There are references in British state papers to the Spanish actually seizing SSC accounting books (SP94/106, 9.3.1732) but no such books survive in the Spanish archives and there are no indications in the sources of either side that Spanish representatives used the contents of seized accounts in bilateral negotiations. At the same time, the British were anxious that accounting records did not end up in the possession of their treaty partners. For example in May 1722 the Board of Blacks (*Junta de Negros*) in Spain observed that at the outbreak of war in 1718 the SSC’s factor in Cartagena had sent the account books of his establishment to Jamaica to prevent them from falling into Spanish hands (AGI. Indiferente. 2801).

The SSC continually evaded the requirement to supply five-yearly accounts under the *Asiento*. In 1725, the King of Spain appointed a board of two accountants to investigate the Royal Treasury’s claim for 800,000 silver *pesos escudos* from the SSC under the treaty. The accountants approached Sir Francis Stratford, representative of the SSC at the Spanish Court and demanded the company’s accounts. In response Sir Francis provided the accountants with a large number of vouchers which they subsequently deemed incomplete and inaccurate. In January 1726, Guillermo Eon, remitted to watch over Philip’s interest in the SSC, made an unsuccessful attempt to secure the required information from the company’s headquarters (AGI. Indiferente General. Legajo 2769. L8-Images 654-656). This motivated a more formal request that the SSC “should report its accounts in due

course, by virtue of their obligation to do so every five years, as it is written in condition 29 of the *Asiento*”. In the meantime, the Spanish authorities insisted that Sir Francis ensure that the SSC submit full accounts. He responded that his directors in London were “working on the completion of those accounts” (AGI. Indiferente General, 2769. L8) but having failed to supply them, on 28 May 1727, Sir Francis was placed under arrest in Madrid (Letter of the Council to Sir Antonio Jose de Cepeda. AGI. Indiferente General 2769. L8).

Important evidence of noncompliance was subsequently made available to the Spanish in 1728-1729 by two officers of the SSC in return for protection and pensions. These were Matthew Plowes, Secretary and Principal Accountant of the SSC in London and John Burnet, a factor for fifteen years at Portobello and Cartagena (Brown, 1926). Plowes supplied 42 documents to the Spanish including financial statements of the SSC. Plowes also prepared a signed submission indicating that the SSC thwarted the terms of the *Asiento*. Illicit trading by the SSC was eventually recorded in the company’s secret accounts. Further, senior officials of the SSC conducted the illicit trade for their personal gain. Plowes testified that on their outward voyages all annual ships to date and many of the Negro transports had carried contraband goods in addition to legitimate cargo. The ships returned laden with silver on which duty was not being paid to Spain, as well as Spanish passengers who were a conduit for carrying the same. Burnet provided evidence of the numerous devices employed by the SSC (such as false measurements and inventories, hiding cargo, sending supplementary vessels and bribing officials) which showed that the *Asiento* and annual ship were a cover for flooding the Spanish Indies with cheap English goods through the factories established for the distribution of slaves (Brown, 1926; Pares, 1936, pp. 20-22).

Increasing knowledge of illicit trading by the SSC resulted in the Spanish tightening on-site monitoring in the Americas during the 1730s. The Spanish Treasury also recognised that controls had been applied loosely by its own bureaucrats. Two responses are worthy of note. First, the *Asiento* provided for the appointment of Spanish managers who would liaise with British factors and others over purchases and accounts with a view to avoiding and resolving disputes. The Spanish managers were also to oversee compliance with treaty obligations on site. In order to address

suspected abuses by the SSC and improve reporting to his Catholic Majesty the Spanish (despite British objections) appointed a factor in *each* of the ports that received shipments from the SSC (AGI. Indiferente General. Legajo 2851).^{ix}

Second, following the receipt of clear evidence of illicit trade from Plowes and Burnet in the late 1720s, the Spanish Minister of Finance appointed Tomás Geraldino as representative at the SSC's headquarters in London in April 1732 (AGI. Indiferente General. Legajo 2785). Geraldino was given instructions to deter contraband trade and improve monitoring of the SSC (AGI. Indiferente General. Legajo 2786). In particular, he was asked to carefully review the cargo of annual ships, and report on the condition of the vessels used and the expenses incurred by the SSC in providing the ship with rigging, equipment, provisions and sails. Geraldino was also requested to check the prices of each item included in the cargo and ensure that it derived from Great Britain, per the Treaty of Utrecht. The loading of cargo on the vessel was to be checked to corresponding invoices and these were to be posted to the Spanish Treasury. Geraldino was also to request from the SSC original invoices of the cargos of each annual ship in the past and details of merchandise traded.

Although he was a salaried member of the Court of Directors of the SSC, the financial accounts and reports revealing the true state of the operation of the *Asiento* were hidden from Geraldino. In mid-1730 the company remitted the conduct of important matters to its sub and deputy governors. This provided a vehicle for concealing much from Geraldino:

If it were the intention of the Spanish court to have a friend in the enemy's camp, it was deceived as nothing but routine matters were placed before the court in Geraldino's presence. The real center of the *Asiento* regulation, where the secrets of the Company were laid bare, was the sub-governor's office. There, Peter Burrell [sub-governor and MP] and his coterie made the important decisions as to policy and read the confidential despatches of the Company agents (Aiton, 1928, p. 168; Nelson, 1945).

Noncompliance and the pursuit of self-interest by Spain

There was another dimension to the pursuit of gain in addition to British noncompliance with the accounting provisions of the *Asiento* treaty. The Spanish

also displayed behaviour suggestive of the primacy of self-interest, at the level of the individual and the state.

Treaty violation by the SSC was facilitated by the pursuit of personal advantage by some Spanish officials who, charged with compliance monitoring, were successfully corrupted by the British. Indeed the SSC set aside monies to provide *regalos*, or 'gifts' for officials. Palmer (1981, p. 73, also pp. 86-88) has contended that "Every crown employee who had been involved in any way in the clearance of a vessel expected a bribe: the chief royal official at the port... the accountant, the writer, and the lawyer". The documents supplied by Plowes and Burnet in 1728-1729 identified the names of Spanish officials in the Indies who accepted bribes to allow the import of contraband. They also indicated that Guillermo Eon, Philip's representative at the SSC from 1717, who had seemingly attempted to control illicit trade (AGI. Indiferente General. Legajo 2776), was actually receiving an annual salary from the SSC of £800 and occasional bonuses of £1,000, for turning a blind eye to false measurements on the annual ships and other frauds by the SSC (Brown, 1926; Nelson, 1945; Batchelor, 1925; Temperley, 1909; Thomas, 1998, p. 237).

At a national level, in the face of the increasing evidence of the damage being done to Spanish commercial and strategic interests, the British were suspicious that Spain's responses to noncompliance were devices calculated to encourage the British to give up the *Asiento* contract rather than enforce or persuade them to comply. There is some evidence to support the SSC's suspicions that the Spanish behaved in ways to achieve this end (SP36/35, 15.5.1735). For example, following a request from Philip V, Johann Wilhelm, Baron of Ripperdá, issued a report in November 1724 on the state of the Spanish economy (Coxe, 1846, Volume II, pp. 365-370). Ripperdá argued that although cancellation of the *Asiento* by Spain was impossible, measures should be taken to ensure strict compliance by Britain with the clauses of the treaty. This, Ripperdá contended, would provoke British withdrawal from the *Asiento*. He also suggested granting navigation permits late so that British vessels would arrive in Spanish ports when commercial fairs (at which goods were sold) were well under way and indicated that secret orders should be forwarded to Spanish governors advising a boycott of British produce as well as enforcement of continuous inspections of merchants selling SSC products.

Benjamin Keene, British Ambassador to Madrid was also to observe that the principal object of Don Josef Patiño, the powerful minister who controlled Spanish finances, was the destruction of the *Asiento* trade (Williams, 1901; McLachlan, 1940, pp. 146-154; Coxe, 1846, Volume III, p. 127). Taking advantage of doubts among its shareholders (if not the directors) about the profitability of the contract and its frequent disruption (McLachlan, 1940, pp. 122-131), formal attempts to secure the SSC's withdrawal from all or parts of the *Asiento* treaty were set in train by the Spanish during the 1730s but the British government was reluctant to accede (McLachlan, 1940, pp. 125-126).^x

It is clear from the foregoing that the SSC were failing to comply with the accounting (and some other) provisions of the *Asiento* treaty. The Spanish were cognisant of this and sought greater informational transparency by appointing factors in each port and placing their own representative at the SSC. It is also likely that the Spanish exploited the SSC's noncompliance in ways designed to further their own interest in encouraging British withdrawal from the treaty. In addition to these essentially unilateral responses, structures and mechanisms were deployed in the international arena to address and manage noncompliance. These institutional responses are the subjects of the following sections.

The management of noncompliance – accounting and the Treaty of Seville Commission

It will be recalled that adherents to the managerialist approach to understanding treaty behaviour contend that noncompliance seldom arises from intentional violation. Rather it is a consequence of ambiguity in the treaty, impediments to the capacity of a state to comply or uncontrollable changes which have emerged since the agreement was signed. Managerialists contend that given the propensity of states to adhere to treaties the causes of noncompliance are best remedied through the routines of international politics as opposed to punitive enforcement mechanisms. Conversely, realists argue that noncompliance will persist while it remains in a state's interest to do so, irrespective of institutional structures designed to address the causes of violation or resolve disputes between treaty signatories. Further, attempts

to manage noncompliance can provide additional opportunities for self-interested states to pursue gains.

In the case of the *Asiento* it will be shown that realist self-interest dominated treaty behaviour and that in this context the establishment of structures to manage noncompliance provided scope for further avoidance of obligations. Although the SSC often argued that noncompliance with accounting provisions was a consequence of incapacity borne of the Spanish seizure of records and disruptions to trade during wartime, the preservation of material gains evidently dictated its behaviour. Rather than being a legitimate basis for noncompliance, incapacity was used as a smokescreen behind which self-interested objects were pursued. Palmer (1981, p. 145) has asserted that while “[t]he company did not always know the truth about its operations...there is reason to believe that sometimes it deliberately misrepresented the state of affairs”.

The war between Spain and England of 1728 resulted in a temporary abatement of Spanish demands for the SSC to render five-yearly accounts of the *Asiento*. The Treaty of Seville, 1729 restored commercial relations between England and Spain to those which prevailed in 1725 (Williams, 1901). This included the resumption of the *Asiento*. In order to resolve disputes between the two nations the Treaty of Seville provided that the crowns would appoint commissaries for the purpose of addressing alleged commercial abuses, seizures of ships and other grievances founded on treaties (*A Collections of Treaties*, 1785, Vol. 2). The commissaries were to meet at the Court of Spain within four months of the ratification of the treaty.

Although the Treaty of Seville was signed on 9 November 1729, the three British commissaries only arrived at the Spanish Court in December 1730. Due to complications over the execution of the treaty in Spain, the three Spanish commissaries were not appointed until one year later. The Commissaries held their first substantive meeting on 3 March 1732 (SP94/106). Armed with evidence from Plowes and Burnet, and aware of the illicit trade conducted by the SSC, the Spanish commissaries submitted a paper which insisted that before any other business could be prosecuted Spain required compliance with two elements of the *Asiento* (Béthencourt Massieu, 1998, p. 194; AHN, Est. Legs. 3365 at. 35). First, under the

2nd article the King of Spain was to be paid duties by the SSC on the import of Negroes. Second, under the 29th article the SSC was to submit their accounts relating to the first five years of the *Asiento*. To date no such accounts had been received in Spain.

Through March 1732 the Spanish commissaries were insistent that these issues be addressed and threatened adjournment if they were not. The British commissaries responded that the accounts were expected but warned that they were unlikely to be “very correct” due to the disruption of trade and “the Imprisonment of their Factors, Seizure of their Books, Effects &c” (SP94/106, 9.3.1732). The Spanish agreed to accept the accounts “in the best manner they could be given” but insisted that a time limit be set for their delivery. The Spanish reasserted that until they were satisfied on this issue and the payment of duties on slaves, they would not proceed to discuss other claims (AGS. Est. Legajos 6882 and 6883; SP94/106, 13.3.1732).

So far as the Spanish were concerned their right to receive accounts every five years under the *Asiento* treaty was “not liable to any doubt or controversy”. Further they laid “The greatest stress upon the Speedy Examination of them” and could not comprehend why, given the importance they attached to this issue and the subsequent work of the commission, their production by the SSC had been deferred for so long (SP94/106, 10.3.1732). By the end of March 1732 it was agreed that the payment of full duties on Blacks would be computed from 1730 and within four months the SSC “shall deliver all the other Accounts they are obliged to render in consequence of the Assiento contract” (SP94/106, 27.3.1732).

The British commissaries requested the SSC to submit the accounts and vouchers as soon as possible and asserted that their failure to do so was preventing discussion of other issues (ibid., 21.3.1732; AGI. Indiferente General. Legajo 2809). The commissaries requested the Secretary of State, the Duke of Newcastle, to press the officers of the SSC to comply with accounting requirements, adding that the Spanish “have that affair so much at heart, we do not believe we shall find them enter upon any other, with a favourable disposition ‘till we are enabled to satisfy them in this particular” (SP94/106, 27.3.1732). On 28 March the British commissaries reported

to the SSC that the Spanish would accept accounts prepared to the last rupture in trade (SP94/106, 27.3.1732).

Meanwhile, the British commissaries set about preparing their lists of more substantive grievances relating to Spanish seizures of goods and ships and other interferences with merchants and their trade. The Spanish responded by drawing up their own list of demands, the first of which was further accounting, the submission of vouchers to support the accounts to be delivered by the SSC: “1. Having allready agreed upon the Delivery of all the Accounts to be given by the Company, His Majesty insists, that all Actions, Titles and Rights relating to those Accounts, and that may appear upon the Inspection of them, shall be previously Examined and Discussed” (SP94/106, 17.4.1732). The Spanish then proceeded to seek recompense for clandestine trade carried on by the SSC and others under the veil of the supply of Negroes and the annual ship. They sought the submission of accounts and other documents to establish the value of that trade (SP94/106, 17.4.1732).

In June 1732 the British commissaries wrote to the SSC to remind them that the accounts were urgently expected and that financial statements which were not “very correct” would be acceptable given that their accuracy was compromised by the interruption of trade. It was considered that the submission of accounts could be to the SSC’s advantage. Not only might they reveal to the Spanish the “great hardships” which the company had suffered but once a just balance had been struck the Company’s trade could proceed without impediment. Most importantly, the SSC was reminded that there was no prospect of rendering the Spanish more receptive to the Company’s demands concerning the *Asiento* “till their Accounts are here and laid before them” (SP94/106, 6.6.1732).

The deadline for the submission of accounts passed on 1 August 1732 without a response from the SSC. The British commissaries feared that the failure to deliver them would be used by the Spanish as reason for not discussing other matters (SP94/106, 19.8.1732; AGI. Indiferente General. Legajo 2785). They urged Secretary of State Newcastle to intervene and at the end of August he accordingly wrote to the SSC encouraging their submission (SP36/35, 5.9.1732). Although relations between the Spanish and British commissaries in Seville were described as

cordial the failure of the SSC to submit accounts began to frustrate the business of the commission. Following a meeting on 4 September 1732 the British reported:

...the South Sea Company's Accounts were demanded from us, in such a manner that Mr Keene himself, I am persuaded, begins to apprehend our Conferences will be very soon suspended, and until we produce them, except Mr Patiño can be prevailed upon to Order the Spanish Commissaries to proceed (SP94/106, 4.9.1732).

It was not until 5 September 1732 that the SSC responded to Newcastle and the commissaries' requests to deliver the accounts. The delay was explained as a consequence of the company being occupied for several months with "uncommon business" (SP36/35, 5.9.1732). Although the deadline for the supply of accounts was passed, the company craved more time on grounds that it had proved difficult to prepare them due to the seizure of vessels and company property by the Spanish (including books and papers) in 1718 and 1727 (AGS. Est. Legajo 895). Although some of the accounts were now ready it was stated that "we have not been very forward to send them, being willing to take all the time we can to make them up with as much Correction and Exactness as possible" (SP36/35, 5.9.1732). Hence, the SSC requested further time for delivery. The company also expressed surprise that delays in submitting accounts should retard the proceedings of the commission because the discussion of other grievances were independent of them. In fact the SSC suspected that the Spanish demand for the accounts was diversionary and confirmation of their faint hopes of any redress from the work of the commission. In the opinion of the SSC the willingness of the Spanish to receive accounts which were less than perfect indicated that an ingenious ruse was afoot: "We do not doubt your zealous endeavour to adjust our affairs according to Justice & Equity, but Evidently perceive the Spanish Commissarys have no such Intention, and that you will be Teaz'd with Artful and dilatory disputes" (SP36/35, 5.9.1732).

Some respite from demands to supply accounts was provided in autumn 1732 because the Spanish commissaries were awaiting further instructions from their finance minister, Patiño (SP94/106, 28.11.1732). Efforts appear to have been made in London to produce the accounts in the expectation that Patiño "will be for having these embroiled Accounts adjusted where he can finger the most money" (SP94/106, 28.11.1732). By February 1733 the British commissaries reported the receipt of accounts from the SSC, "incorrect as they are", and noted that supporting vouchers

were soon expected for presentation to the Spanish (AGI. Sección de Contaduría. 266). However, much remained unknown: “We have not the General Account with His Catholick Majesty, nor the Account of the Negro Trade, in which his said Majesty is One Fourth part concerned and whereby many think the loss must be considerable” (SP94/106, 17.2.1733).

The accounts submitted thus far focussed on seizures of SSC property by the Spanish to the value of three million dollars, plus interest. The British commissaries contrasted this revelation with the heavy complaints by the Spanish about the insufficient supply of slaves and the conduct of a substantial illicit trade by the SSC. It was noted that if the accounts of such losses had been available at the outset of the Seville commission fewer concessions would have been granted to the Spanish on issues such as the duties on Negroes (SP94/106, 17.2.1733).

Although it was not formally disbanded the work of the commission abated in February 1733 when the Spanish Court moved from Seville to Madrid (Hildner, 1938). The dispute over the settling of the five-year accounts of the *Asiento* was not resolved. In the remainder of 1733 reference was made in correspondence to the frustration of further work by the commission due to the confused accounts of the SSC (SP94/106, 9.6.1733). During 1733 Tomás Geraldino, the Spanish representative on the Board of the SSC, was informed that the preparation of accounts in a form consistent with the requirements of the *Asiento* Treaty was not possible (AGI. Indiferente General, 2790). In relation to the first period of the *Asiento*, John Reed, the Accountant of the SSC, claimed that factors had not submitted diaries or ledgers until November 1719 (AGI. Sección de Contaduría. 266). The SSC attributed a lack of earlier accounting records to the seizure of a vessel by the Spanish during the war of 1718-1722 which was carrying the accounts of the factories (AGI. Sección de Contaduría. 895). The SSC therefore argued that it would have to reconstruct transactions from other documentation and interviews.

Geraldino then proposed that the accounts be reconstructed from information contained in the SSCs “Cash and Entry Book” (AGI. Indiferente General. Legajo 2790) and on 3 March 1734 Reed handed to Geraldino the accounts corresponding to the first five years of the *Asiento* (which actually covered 1714-1721 because of war

between Britain and Spain) (Donoso, 2002; AGI. Indiferente General, 2790). A translated version of the ‘Statement of Accounts’ was sent to the Accounting Office of the Ministry of Treasury in Madrid. Having examined the documents, the Spanish accountants identified numerous objections and proposed that the accounts of the SSC for the period May 1713-March 1721 be rejected as unverifiable and inconsistent with the provisions of the *Asiento* treaty (Donoso, 2002). The Spanish demanded that the SSC prepare accounts which were consistent with the treaty and in a form conventionally supplied by companies. They would not pass simple cash accounts merely to facilitate the speedy resolution of disputes (SP94/131).

In April 1734 Ambassador Keene, who, as mentioned above, also acted as an agent for the SSC, provided the Spanish representative with a financial summary of the trade in Negroes for the period 1 May 1714 to 31 March 1721 (AGI. Indiferente General. Legajo 2814). According to this summary, the SSC incurred expenditure of £546,786.17.11 arising from the purchasing, feeding and other costs of supplying slaves. Yet, the SSC could only generate revenue of £334,515.8.3 from their sale. Therefore there was a £212,515.9.8 loss^{xi} from the trade in Negroes (AGI, Indiferente General. Legajo 2786 and 2792).

Concluding the accounts of the SSC proved difficult and protracted. In November 1734 the British commissaries expressed their low expectations that agreement could be reached with the Spanish over this and other matters (SP94/106, 5.11.1734). The British failed to secure redress for Spanish ship seizures and impediments to trade. The Spanish complained about the failure to adjust the affairs of the SSC and the illicit trade it conducted (SP94/106, 5.12.1734). The British commissaries had been in Spain for three years “without being able to come to any Determination upon the Respective pretensions, which, we were given to understand, proceeded principally from the Difficulties that arose with regard to the South Sea Company’s Accounts” (SP94/106, 5.12.1734).

Given that the SSC’s accounts had not been kept “with any tolerable Correctness”, allegedly due to the ruptures to the *Asiento* trade, Spanish requests for further evidence and clarification met with delayed responses from London. Although it was recognised that Patiño “desires nothing so much as the Settling the Accounts of the

South Sea Company, and the Regulating of the Commerce of the West Indies” (SP94/106, 5.12.1734) there were “daily” disputes over the accounts between the SSC and Tomás Geraldino. Given the centrality of the accounting issue to Anglo-Spanish relations the British commissaries suggested that the commission be moved from Spain to London, to be closer to the SSC’s records. It was agreed by Newcastle in Whitehall that this should be put to the Spanish as the most speedy and effective way to “settle the several points which remain unadjusted” (SP94/124, 24.2.1735). However, the proposal was not taken up.

Unresolved conflicts over the SSC’s failure to submit periodic financial statements under the *Asiento* treaty were not the only source of dispute between Britain and Spain which focused on informational transparency and reporting through the medium of accounting.

The management of treaty ambiguity – accounting and the annual ship

For managerialists ambiguity and indeterminate language in treaties are important explanations for noncompliance which are not suggestive of intentional violation.

Such issues arise because:

Treaties, like other formal statements of legal rules, frequently do not provide determinate answers to specific disputed questions. Language is unable to capture meaning with precision. Drafters do not foresee many of the possible applications, let alone their contextual settings. Issues actually foreseen often cannot be resolved at the time of treaty negotiation and are swept under the rug with a formula that can mean what each party wants it to (Chayes & Chayes, 1995, p. 10).

Managerialists contend that such causes of noncompliance are best addressed by deploying “routine international political processes” of persuasion and dispute settlement (Chayes & Chayes, 1993, p. 204).

There was a particular accounting-related source of indeterminacy in the *Asiento* treaty. Although the treaty obliged the Assientists to submit accounts of the gains earned at the end of five years and established the entitlement of the King of Spain to a share of the profits of the annual ship, there was no specific mention of accounting and reporting in relation to the latter. Archival sources suggest no consideration of this subject during the negotiations leading to the signing of the *Asiento* treaty (AGI. Indiferente General. Legajo 2773). This is surprising given the recognition that trade

in merchandise rather than the supply of slaves was expected to provide the main source of profits for the Assientists (AGI. Indiferente General. Legajo, 2773).

Much discord was to centre on accounting for, and distributing the profits of, the annual ship. Attempts to resolve this source of treaty ambiguity and resultant conflict were conducted through direct negotiation and indirect exchanges between British and Spanish diplomats and politicians. These processes proved to be inadequate mechanisms for managing alleged treaty noncompliance in a context where behaviour was driven by a realist pursuit of self-interest. It was to the material advantage of the SSC to exploit indeterminacy over the presentation of accounts of the annual ship. Concession and greater transparency would have revealed the company's involvement in illicit activity and also form the basis for calculating profits to be remitted to the Spanish Crown.

As related earlier, the *Asiento* provided that the SSC could send an annual vessel to trade in the Spanish Indies. This was compensation for the expected losses arising from trade in Negroes. The first ship to head for the Americas, the *Royal Prince*, was scheduled for 1714 but delayed until 1717 (AGI. Indiferente General 2769, L8, Picture 351). In May 1716 a *Convention for Explaining the Articles of Assiento Treaty* had been signed which contained clauses relevant to the annual ship (*A General Collection of Treaties*, 1732; *Tratado de la Declaración*; AGI. Indiferente General 2785). It was agreed that strictures concerning the sale of merchandise transported by annual ships at appointed trade fairs would be relaxed (AGI. Indiferente General 2769 L9) and the cargo of the next ten annual ships would be 650 tons each. In fact, only seven annual ships sailed during the period of the *Asiento*, the last being the *Royal Caroline* in 1732. In contrast to the legitimate trade in Negroes, the annual ships did generate healthy returns, in some cases profits were in excess of 100% (McLachlan, 1940, pp. 130-131). When accounts of the *Royal Prince's* voyage in 1717 were finally made up in late 1733 they showed reported profits of £43,607 (AGI. Sección Contaduría. 266, Legajo 3). After deducting interest on the loan granted by the SSC to the King of Spain, the Spanish claimed £8,678, but this was never received.

The submission of accounts of the profits earned by annual ships became an ongoing source of dispute. The *Prince William* sailed to Portobello in 1730. In 1732 one stockholder claimed that £200,000 of the return cargo of this vessel derived from illegal trade (Nelson, 1945) and in February 1733 the Spanish demanded the accounts of the voyage. In the absence of an unambiguous obligation under the *Asiento* treaty to report the British suggested that the SSC exploit the opportunity by preparing an account to highlight the impediments to trade imposed by the Spanish. The account might show the share of profits due to the Spanish less the proceeds of goods which had been embargoed by them and be accompanied by an insistence that the company's effects be "disembarrassed" before any payment was made (SP94/106, 17.2.1733). Despite such diversionary tactics public accusations of illegal trading in Britain provided ammunition to the Spanish and following Geraldino's protestations the captain of the *Prince William* was dismissed.

The last annual ship sent by the SSC was the *Royal Caroline* which sailed to Veracruz. The loading of the vessel commenced in August 1732 and was closely monitored by the Spanish. Geraldino complained to the SSC that contrary to the Treaty of Utrecht some merchandise derived from countries other than Great Britain. The SSC responded that such merchandise had been loaded on previous annual ships without complaint (AGI. Indiferente General. Legajo 2786). Geraldino relented. However, he requested copies of invoices relating to the goods carried and these were forwarded to the Spanish manager in Veracruz with a view to thoroughly scrutinising the sale of the cargo. Two of Geraldino's officers also guarded the cargo during the voyage (Batchelor, 1925).

The *Royal Caroline* arrived in Veracruz on 25 December 1732 and was inspected by the governor, royal officers and the Spanish factor, Juan de Ávila (AGI. Indiferente General. Legajo 2786). During the inspection the Spanish complained about the large amount of provisions, supposedly for consumption by the crew during their eight to ten month stay in Veracruz. The Spanish argued that the provisions were carried for the purpose of smuggling. The cargo of the *Royal Caroline* delivered in Veracruz comprised wool, linen, silk, and other merchandise (AGI. Indiferente General. Report of Juan de Ávila. 15 November 1733). Ávila reported to the Spanish Minister of Treasury that officers of the *Royal Caroline* had not properly

accounted for expenses incurred during the winter (*invernada*) in Veracruz (AGI, Indiferente General. Legajo 2786 and 2789). Furthermore, there was no documentary support for, or proper accounting of, some items of cargo. It was difficult to identify from the books of account which items represented expenses of the voyage (to be deducted from income) and which were cargo for trade.

Despite these difficulties Ávila used data delivered by officers of the *Royal Caroline* to reconstruct the value of the cargo carried to Veracruz (AGI. Sección de Contaduría. 266, Legajo 4). Calculations of profit and loss were supported by the invoices of cargo transported to Veracruz, returns (*retornos* – an inventory of items transported back to London), and available accounts of the SSC (which provided the debit for expenses incurred on the voyage). The profit and loss account consisted of a number of items. First, the cost of the cargo transported to Veracruz was £214,017.2.3, or 1,070,085 *Pesos*, 4 *reales* and 6 *granos*.^{xiii} Second, sale of the cargo to two Spanish merchants for 1,554,579 *Pesos* and 7½ *Reales*, that is, £349,778.9.12. Importantly, and for reasons which are not known, Ávila did not consider the cost of merchandise in the net income calculation of the voyage to Veracruz. However, with the consent of the British, he recorded £180,814.13.7. Lastly, after admitting some expenses incurred by the SSC and recorded in its accounts, Ávila reported a profit of 384,000 *Pesos* (£76,800) for the voyage.

The *Royal Caroline* departed Veracruz on 17 November 1733 laden with Spanish and English currencies, silver, indigo ink and grain. The ship reached Dover on 6 January 1734 and docked in London three days later. Geraldino issued a report to the Spanish Minister of Treasury on 14 January and copied it to the Court of the SSC. In this Geraldino complained that information about the *Royal Caroline* had been withheld. He had been handed relevant documents during a general assembly of the SSC, not on the arrival of the vessel. In a private letter to the Spanish Ministry of Treasury, Geraldino expressed his suspicion that such manoeuvres were an attempt to hide the fact that a portion of the cargo belonged to private individuals. He also reported having received word that a substantial amount of silver had been smuggled on the ship. Ávila had warned him that “at the time of loading the vessel with fifty five barrels of salted meat as provision for the crew, we found a number of silver bars that were deposited in our royal lockers and weighed five hundred and nineteen

marcos” (AGI. Indiferente General. Legajo 2789). Geraldino added that this illegal trading in silver was consented to by the British government on grounds of its “national benefits” (AGI. Indiferente General. Legajo 2790).

On 13 and 28 March 1735 Geraldino requested the Court of Directors of the SSC to supply the accounts of the *Royal Caroline*, pay one quarter of the profits of the venture plus 5% duty on three quarters of the cargo, as required under the *Asiento* treaty. The SSC referred the request to a committee which reported on 1 May that the accounts of the annual ship should be submitted jointly with the five-yearly accounts of the *Asiento*, next due on 1 January 1736. Geraldino then presented a third demand for the accounts and the payment of profits of the *Royal Caroline*. The committee of the SSC responded on 9 May 1735. It had resolved that: i) Geraldino’s first demand for accounts was received when much of the cargo remained unsold and an exact account could therefore not be rendered at that time; ii) although the cargo was now sold, there was no provision in the *Asiento* treaty which stipulated “the Time or manner of rendering the Accounts of Annual ships” (SP36/37, 4.12.1735); iii) the articles of the treaty stated that accounts of the *Asiento* were to be submitted every five years and in the absence of a specific provision relating to the accounts of the annual ship, this implied a five-year accounting period for both; iv) as the treaty recognised that the annual ship was permitted as compensation for likely losses from the supply of Negroes, profits from the ship should be retained until the extent of those losses were known and the two matters settled at once; and, v) the payment to Spain of a share of the profits following the voyage of the *Prince William* to Portobello in 1730 did not constitute a precedent.

The Spanish ministers considered these arguments to be baseless. Their frustration was made clear in a letter by Patiño to Keene on 7 August. Patiño, who was to later assert that contraband of £150,000 was carried on the *Royal Caroline* (Nelson, 1945), noted that despite repeated requests from Geraldino “grounded upon the strongest and most convincing arguments”, the SSC remained determined not to submit an account of the *Royal Caroline* or to remit the share of the profits due to Spain (SP94/123, 7.8.1735). It was noted that King Philip had “been informed of the groundless pretexts by which the Company endeavour to exempt themselves of the obligation of finishing these accompts” and urged the British Court to issue direct

orders to secure compliance as soon as possible (SP94/123, 7.8.1735). Further, it was argued that the *Asiento* treaty offered no power “to blend the accompts of the Negro trade with those of the annual ship”. These trades were quite distinctive, one being a long term arrangement and accounted for accordingly, the other relating to individual ventures to be accounted for separately. It was also argued that the SSC had complied in the case of the *Prince William* and while there might be reasons for the delay in submitting five yearly accounts of the *Asiento* there should be no such delay in relation to the accounts of a single venture. The Spanish also noted that it was known that the SSC maintained a separate fund and account for each annual ship (SP94/123, 7.8.1735).

Keene responded by writing to Secretary of State Newcastle. It was noted that the Spanish were demanding this issue be placed before King George himself in the knowledge that the *Asiento* had become a national concern. It was suspected that the Spanish were attempting to involve sovereigns as a prelude to more radical measures. Hence, it was advised that directors of the SSC should convince Geraldino of the justice of their own case and seek to resolve disputes on reasonable terms. Keene suggested that a committee be formed to prevent the mounting recriminations on both sides - a suggestion that was not taken up (SP94/123, 15.8.1735; Hildner, 1938). Responses by the SSC to Spanish complaints failed to take the heat out of the situation. In a letter to Keene in November 1735 Patiño concluded that the SSC was merely responding to grievances by heaping up its own complaints. This was a device for “swerving from the truth, or omitting those arguments by which their complaints have been fully confuted, with the only view of carrying on an illicit trade, and concealing thereby their own private gains” (SP94/123, 6.11.1735).

Geraldino eventually received an account of the profits of the *Royal Caroline* from the SSC. This was sent with his report to the Spanish Minister of Treasury on 28 December 1735 (AGI. Sección de Contaduría. 266). His calculations were more comprehensive than those previously performed by Ávila, who kept records for the sale of merchandise in Veracruz and the cost of the returns brought back to England. The calculations of the SSC indicated that the round trip of the *Royal Caroline* produced a net profit of £125,834, though this figure was disputed by the Spanish (AGI. Indiferente General. Legajo 2790). Hence, the interest of the Spanish monarch

in the venture, after deducting 8% annual interest on the loan granted to him by the SSC, was £27,896. The Ministry of Treasury expressed some serious concerns about the fairness of the calculations.

(Figure 1 to appear about here)

(Figure 2 to appear about here)

Neither side satisfied the demands of the other. By early 1736 there was stalemate (Hildner, 1938). Spanish frustration at the non-submission of acceptable accounts and the share of profits of the *Royal Caroline* was indicated by a reluctance to grant a *cedula* (license) for the next annual ship (SP36/40, 21.1.1737). Although Keene proposed to remit to the Court of Spain the share of profits made by the *Royal Caroline* if the *cedula* was granted, the SSC continued to refuse to pay them (SP36/40, 24.2.1737). When a *cedula* was eventually received the conditions attached to it rendered it impracticable for the SSC to provide a cargo and despatch a ship (SP36/45).

Failure to manage treaty noncompliance

Attempts to manage alleged noncompliance arising from treaty ambiguity through political processes proved fruitless as the matter of accounting for the annual ship was compounded by other issues which contributed to deteriorating relations between Britain and Spain. The period 1737-1739 has been described as ‘The Depredations Crisis’ in which the British and Spanish sought satisfaction for their claims against each other (McLachlan, 1940, p. 78).

In 1737 Geraldino and Newcastle held discussions to settle the claims of the two states. On 2 January 1738 Geraldino reported to Patiño on a recent meeting with Newcastle which had addressed the value of seizures and losses of the SSC (AGI. Indiferente General. Legajo 2851). Later during 1738 Geraldino and Stert (who had been a commissary under the Treaty of Seville) thrashed out a settlement of British and Spanish claims. This determined that a balance of £140,000 was payable by Spain to Britain for seizures and losses (Hildner, 1938; McLachlan, 1940; Temperley, 1909; SP94/131).

In Madrid, similar negotiations involved Josef de la Quintana (who replaced Patiño as chief negotiator in 1736) and Ambassador Keene (AGS. Est. Legajos 7625 and 7632). In November 1738 Quintana and Keene reached an agreement on the following issues: (i) the value of seizures, as reported by the SSC, would be accepted by the Spanish; (ii) the period of the *Asiento* should be extended for the years in suspension during wars between the two countries; (iii) the King of Spain should return the cash advance of 200,000 pesos; (iv) Spain should grant permits to annual ships with larger cargos; (v) in return, the SSC should deliver the accounts of the Negro trade and annual ships, albeit by using a less strict accounting system (i.e. one focused on the cash account); (vi) the SSC should pay its duties for the introduction of Negroes, that is, 68,000 pesos at an agreed exchange rate between the national currencies of 52 pennies/peso. The last two clauses were deemed fundamental if the Spanish were to sign the agreement. Without satisfaction on these points the Spanish warned that they would suspend the *Asiento*. Although the Head of the Department of the Indies in Madrid (and a former commissary under the Treaty of Seville) continued to complain that the chief sticking point was the refusal of the SSC to provide an undisputed account of the profits of the last annual ship (Hildner, 1938), the general terms of the agreement between Quintana and Keene secured a temporary accord as the Convention of El Pardo on 14 January 1739.

Despite being criticised within his Privy Council, King George II endorsed the agreement on 4 February 1739 (AHN. Est., Legajo 3365) but when its details were disclosed there was an adverse public reaction. Objections were raised to the payment of 68,000 pesos to the King of Spain. On 12 March the general assembly of the SSC decided not to pay the sum and requested George II to call a general election. In order to calm the situation Parliament broke for a three week vacation.

However, in April-May 1739 “came the final rupture of the Spanish Government with the South Sea Company” (Temperley, 1909, p. 231). The Spanish demanded that unless the agreed 68,000 pesos was paid by the SSC it would not remit £95,000 to the British Crown and would suspend the *Asiento* (Batchelor, 1925; Hildner, 1938; Pares, 1936, pp. 52-57). This fracturing of a bilateral treaty made the prospect of peace remote. The British government supported the claims of the SSC. On 4

June, Ambassador Keene forwarded a letter to the Spanish King stating that his debt with the SSC was “infinitely higher than the sum stated for seizures” (AGI. Indiferente. 2786). In June the payment of £95,000 by Spain became overdue and its government affirmed that it would not comply until the SSC had remitted what it owed the Spanish Crown. Anti-Spanish sentiment had been running high since 1738 following revelations of cruelty, such as the cutting off of the ear of Captain Robert Jenkins by *guarda-costas* in Havana in 1731. War was declared by Britain on 19 October 1739. Two years after the resumption of peaceful relations between the two countries in 1748 the *Asiento* was ended under a commercial treaty between Britain and Spain (McLachlan, 1940, pp. 132-145; Pares, 1936, pp. 517-533).

Thus a key feature of the depredations crisis was the ongoing failure by the SSC to account and report in a transparent manner. As realists would contend this failure and consequent noncompliance was driven by the SSC’s determination to preserve its own interests. In such circumstances attempts to manage treaty noncompliance proved futile. The determination not to comply with the accounting provisions of the *Asiento* treaty (in the context of Spanish knowledge of secret accounts kept by the SSC which proved clandestine trading) and the ambiguity over reporting the accounts of annual ships was a constant source of friction between Britain and Spain.

Historians continue to debate the causes of the War of Jenkins’ Ear, 1739-1748. Having reviewed the secondary sources Levy & Young (2008) recently contested the notion that this was simply a trade war and point to the importance of British military-strategic and domestic political factors to explaining the conflict. But even revisionist accounts concede that the commercial dispute between Britain and Spain was “a necessary condition for war” (Levy & Young, 2008, p. 27). Our examination of archival material relating to both nations tends to affirm the view that “in 1739 England and Spain had gone to war, nominally over Captain Jenkins’ ear, but in fact to settle the disputed *asiento* which had been granted to England at the Peace of Utrecht” (Andrews, 1965, p. 182; Kamen, 2002, p. 471). Moreover, an important, if unglamorous, element of this dispute centring on the *Asiento* was a failure to account. As Nelson (1945, p. 67) observed:

Unable to accept the destruction of its commercial system, Spain attempted to negotiate but requested that the [South Sea] company, as an evidence of good faith, should open its accounts for inspection by the Spanish representatives. Naturally, the directors refused, for compliance would have meant the

complete exposure of the illegal traffic. Neither Spain nor the South Sea Company would yield. War was the inevitable result...

Conclusions

Through a study of the *Asiento* treaty between Britain and Spain an attempt has been made to extend research on the interfaces between accounting and law to the international domain. In modern times the original, subordinated role of accounting to law has experienced a transformation consequent upon the growing dependence of law on accountancy and the increasing reliance on calculative techniques in the governance of economic and social institutions (Miller & Napier, 1993). Our findings indicate that changes in these relationships may not have exhibited a path of temporal or spatial linearity. The investigation has illustrated the centrality of accounting to the operation of an international treaty and the discourses surrounding its performance during the eighteenth century. Such episodes indicate the potential for demonstrating that “the boundaries of accounting and law are not given, but can be viewed as continually negotiated and renegotiated” (Miller & Power, 1992, p. 251).

The study reported here indicates that when an international perspective is taken more complex, multi-layered dimensions of the relationships between accounting and law may be revealed. The *Asiento* treaty was attended by an increasing emphasis on accounting through the hierarchy of institutions engaged in its operationalisation. These comprised international committees, nation states, the agents of nation states and local operators. Accounting featured large in the work of an international committee such as the Treaty of Seville Commission. At nation state level the delivery of accounts became central to the negotiations between Britain and Spain (AGS. Est. Legajos 6882 and 6883; SP94/106, 13.3.1732). At the level of agents of the state, accounting became a core issue during discussions between the Assientists (the SSC) and the British government, and with representatives of the Spanish crown. At the operational level, officers of the SSC and local factors were conscious of the importance of accounting procedures and account books to day-to-day activity and the reporting hierarchy above them.

The investigation has revealed the manner in which accounting may be implicated in international relations and we concur with Richardson and MacDonald (2002) about the merits of drawing on work in that field. Our particular focus concerns literature on treaty compliance, transparency and reporting. It has been shown that accounting was not only significant to the performance of the *Asiento* it also featured significantly in the deteriorating relations between Britain and Spain which culminated in the outbreak of war in 1739. The investigation indicates that in the context of hostility between nations and the geopolitics of the international arena the significance of accounting systems can be heightened. As Power (1997, p. 1) reminds us “accounts only become objects of explicit checking in situations of doubt, conflict, mistrust, and danger”. Relations between Britain and Spain in the early eighteenth century were not characterized by that mutual trust which “releases us from the need for checking” (Power, 1997, p. 1). On the contrary, during the years of the *Asiento* treaty relations “were prickly in the best periods and bitterly hostile in the worst” (Palmer, 1981, p. 132). Furthermore, the paper indicates the deficiencies of accounting as a mechanism for achieving transparency in treaty compliance. This stems from the subjectivity inherent in accounting practice, the scope for manipulation and the extent to which interpretations of what it discloses may be ideologically charged. When accounting becomes politicised and operates in situations of asymmetries of power between nation states its potential as an objective technology of treaty verification is difficult to achieve.^{xiii}

While the analysis performed here is not explicitly comparative in orientation it has highlighted the importance of identifying national differences when exploring international accounting phenomena in historical contexts (Carnegie & Napier, 2002). The study indicates that the effectiveness of accounting in treaty compliance is rendered complex by divergent legal, political and cultural structures of signatory states. The effectiveness of information flows in compliance depends on a shared understanding of the significance and nature of the data exchanged. In relation to the *Asiento* there were evidently divergent perceptions in Britain and Spain about the accountings produced to monitor and verify adherence. The discourses related above have revealed different conceptions of the importance of accounting and control in the two nations - divergent notions of the manner in which accounts are constructed, the frequency of their production, acceptable degrees of disclosure and bases of

measurement. Given the absolutist, regulated nature of the Spanish state during the eighteenth century, its civil law tradition of codes, and the manner in which accounting and control had become ingrained in the monitoring of the operations of individuals, firms and organs of public administration (Hernández Esteve, 1983, 1986, 1988; Donoso Anes, 1996; Carmona & Donoso, 2004), it was no surprise to discover Spanish insistence on the regular supply of comprehensive accounting information by the contractors of the *Asiento*.

However, the party obliged to supply the accounts appears to have accorded less significance to the obligation. The SSC maintained a loose system of control. Its factors were obliged to render accounts on a two-year basis (Sorsby, 1975) and did not submit diaries or ledgers until the *Asiento* was well under way (AGI. Sección Contaduría. 266). The refusal of the SSC to respond positively to requests to submit accounts, as required under the treaty, appeared incomprehensible to the Spanish who assumed that private behaviour would conform to the will of the state (Johnson, 1981). The relationships between the British government and the SSC operated within a constitutional monarchy and a common law tradition which increasingly emphasised liberty, individualism and the legal rights of investors. It is significant that the ‘Glorious Revolution’ had commenced in 1688 and the Bill of Rights was passed in 1689 (LaPorta et al, 1998; Teeven, 1990, chapter 4).

Under such circumstances, the British Crown was not possessed of the necessary authority to compel the SSC to render accounts of the *Asiento*. The SSC had considerable influence within the state, borne of the interest of the Crown in the company and, most importantly, its role in securing British influence and access to markets in Latin America. Hence, following the Convention of El Pardo, 1739 it was established that George II did not have sufficient power to secure SSC compliance with the conditions of an international treaty endorsed by the British government (AHN. Est., Legajo 3365). The British also appear to have adhered to the strict, classical notion of sovereignty whereby the state was deemed to be under no obligation to notify other parties of its actions even where they had an interest in the matter (Chayes & Chayes, 1995, p. 168).

Ultimately, as contemporary commentators recognise, in the realm of treaty behaviour “cultural and social contexts may make compliance significantly more difficult to elicit from the companies and citizens of one country than those of another” (Mitchell, 1994, p. 45). Divergent constitutional and political structures also play a part, particularly in pre-globalisation eras. Diverse legal systems and concepts are also significant. In the countries and period discussed above the patterns of reform in mercantile and private law varied significantly (Mills, 1990) and the differences between the common and civil law traditions coloured assumptions about accounting and its performance (Johnson, 1981). While they complicate the scene such contrasts also provide unique settings for investigating the “unstable” relationships between accounting and law in the international arena (Napier & Noke, 1992). Such contrasts also indicate the advantages of venturing beyond the common law sites which have tended to predominate in studies of the relationship between accounting and law (Johnson & Gunn, 1974).

The findings discussed above offer scope for commenting on the relative potency of the managerialist and realist paradigms of treaty behaviour. Managerialists contend that noncompliance can be addressed through routine processes of dispute resolution and persuasion rather than formal enforcement. The process of dispute resolution is epitomised by ‘jawboning’ - “an effort to persuade the miscreant to change its ways” (Chayes & Chayes, 1993, p. 204). The current study suggests that although such processes were instituted to ‘manage’ the noncompliance of the SSC these solutions were ineffective. Whilst the British party to the treaty had assumed a calculated approach to the benefits of noncompliance the Spanish engaged in activities designed to provoke the British withdrawal from the *Asiento* (Memo issued by the Baron of Ripperdá in 1724, see Coxe, 1846, Volume II, pp. 365-370). The international arena portrayed in the paper was decidedly competitive and relations between the states were lacking in trust; the scene witnessed a struggle for power, wealth and security between Britain and Spain (Donnelly, 2000).

Under these circumstances, how would adherents to the realist and managerialist approaches explain noncompliance with the accounting provisions of the *Asiento* treaty? Managerialists contend that noncompliance can arise from factors such as incapacity to meet obligations and treaty ambiguity, as opposed to wilful violation.

Indeed, in the case discussed here, the SSC claimed that its ability to comply with accounting obligations was thwarted by interruptions to trade and loss of records due to military conflict and Spanish seizures. It is also evident that the conduct of the *Asiento* through the agency of the SSC complicated reporting by the British government to the Spanish Crown and there was indeterminacy regarding the obligation to submit accounts of the annual ships. Different levels of signification were accorded to accounting mechanisms by the British and Spanish governments. However, given the production of private accounts which revealed the material gains of illicit trading it would appear that incapacity and the existence of a “zone of ambiguity” in the *Asiento* treaty were utilised as further opportunities to pursue self interested objectives (Chayes & Chayes, 1995, p. 191). Consequently, the behaviour of the SSC and the British state (and also some Spanish agents and officials), was focussed on maximising gain and seeking advantage. For these reasons a realist interpretation of noncompliance with the *Asiento* treaty appears most convincing.

Explanations and remedies for noncompliance with the accounting provisions of the *Asiento* also suggested the primacy of realist behaviour. Managerialists emphasise that international cooperation is facilitated and issues of noncompliance addressed through greater transparency. However, for this to be effective the parties have to establish a common perception of the form, content and interpretation of the information shared (Morrow, 1994). As we have seen informational transparency through accounting for the *Asiento* was seldom achieved in a context of wide cultural differences and where the pursuit of self-interest and gain was prioritised. As Downs et al (1996) remind us the benefits of cheating may be too high to be countered by transparency alone. Moreover, in the case of the *Asiento* rather than nurture trust, encourage reciprocity and reduce uncertainty, the actualisation of transparency and verification through accounting disclosures became an additional source of conflict.

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Royal Caroline: Profit and Loss Account (Summary)

[illegible]

Royal Caroline: Distribution of Profits

[illegible]

NOTES

ⁱ It should be noted that some scholars, particularly in continental Europe, distinguish diplomatic history from the history of treaties. The former concerns the history of relations between nations. The latter comprises two streams: i) treaties and the history of international law, ii) the history of treaties as reflective of the economic, ideological, social and political complexions of the states which they involve (see Toscano, 1966, pp. 1-7).

ⁱⁱ The AGI is an essential source for examining the relationships between Spain and its overseas colonies. It is well preserved and easily available.

ⁱⁱⁱ In modern times measurement technologies are to be found in treaties relating to nuclear proliferation, chemical and biological weapons and climatic change. Verification systems may comprise the collection of information gathered from data declarations and exchanges, physical inspections and monitoring, and the employment of surveillance technologies such as satellites, aircraft and ground-based sensors (Tulliu & Schmalberger, 2004, chap. 10). Accounting also features in some treaty verification and reporting regimes. For example, in non-proliferation treaties the International Atomic Energy Agency has utilised nuclear ‘materials accounting’ as a principal technique (Keeley, 1998).

^{iv} To determine the number of *Piezas de Indias*, the height of Negroes was measured (*palmeo*). The unit of measure was the “hand” and the height of Negroes had to be at least seven hands (approximately 1.50 metres) to be considered a *Pieza de Indias*. The ‘height’ could be adjusted in consequence of physical or mental disease. The resulting number was then divided by seven to determine the equivalence of each Negro as *Pieza de Indias*.

^v The silver *peso escudo* was the currency used in the Indies. It was worth eight *Reales* of silver. Interestingly, the silver *peso escudo* was the unit of measurement used in the Spanish accounting books studied in this investigation.

^{vi} The accounting system of the SSC during the early *Asiento* is discussed in Donoso (2002).

^{vii} Three months before the treaty was signed unresolved issues concerned matters other than accounting such as the suspension of the *Asiento* in the event of the outbreak of war and the introduction of free trade with Spanish American colonies (AGS. Est. Legajos. 6820, 6822). By February 1713 the British and Spanish negotiators were interested in the rate of tax to be applied when the number of slaves supplied to Spanish factories exceeded the annual quota (AGI. Indiferente General. Legajo, 2773).

^{viii} The Spanish representative to the Court of the SSC had access to the ‘official’ accounts of the company. As noted in the foregoing, the SSC failed to report regularly to the Spanish on its activities and obviously provided no access to its secret books. Disclosures by insiders such as Plowes and Burnet were therefore the principal source of data for the Spanish on the illicit trading conducted by the SSC.

^{ix} The SSC complained that this was in breach of article 28 of the *Asiento* which stated that the Spanish would appoint two managers or factors in London, one in Cádiz and only two in the Indies (*A Collection of all the Treaties*, 1785; AGI. Indiferente General. Legajo 2769, L8).

^x In 1732 Geraldino, Spain’s representative on the Court of the SSC, was remitted by King Philip to propose to the SSC that the annual ship be discontinued for an equivalent (SP36/30, 8.9.1733; AGI. Indiferente General. Legajo 2791). Geraldino subsequently delivered another proposal stating that the King of Spain would allow an equivalent for the remaining term of the *Asiento* if it were given up (SP36/30, 19.12.1733, 19.1.1734; also Palmer, 1981, pp. 141-142).

^{xi} Unbalanced figures taken from archival documents; the actual difference should be £334,271. 8.3

^{xii}

Peso	Real	Grano
1	8	96
	1	12
£	s.	d.
1	20	240

	1	12
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^{xiii} These limitations were not only apparent in the eighteenth century context. In modern times, the International Atomic Energy Authority traditionally emphasized ‘materials accounting’ for monitoring compliance with non-proliferation treaties. Its scientific and quantitative features rendered materials accounting an authoritative technology, one which was also less intrusive than physical inspection. However, the limited assurances it afforded also became apparent. Where voluntary self-declarations were made by nation states the accuracy and completeness of accountings were often questioned. It was also possible for “fully clandestine flows” to remain undetected by materials accounting. Neither could the technique capture the qualitative political underpinnings of noncompliance (Keeley, 1998, pp. 26-27).